

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-09-1-5-01228-16
45-004-15-1-5-01834-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-278-011.000-004
Assessment Years: 2009 and 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2009 and 2015 assessments of his property located at 9249-53 Pottawatom Trail in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$13,300 for 2009 and \$8,000 for 2015.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On September 17, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Robert W. Metz and Terrance Dourousseau, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record for this matter includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the

¹ Neither party offered any exhibits.

assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).

6. Here, the property's assessment decreased from 2008 to 2009 and from 2014 to 2015. Nowacki therefore bears the burden of proof for both years.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The property record card shows the property's assessment staying right about \$13,000 from 2008 to 2010. Then it jumped to \$16,900 in 2013 and \$17,000 in 2014. In 2015, its assessment was back down to \$13,600. It is hard to figure out how the Assessor arrived at any of these values. *Nowacki testimony*.
 - b. Nowacki contends that the Assessor's numbers are fictitious because there are no arm's-length transactions in and around the property's subdivision from which to establish value. The property repeatedly churned through commissioners' sales before Nowacki acquired it for the minimum bid. He contends that the property's fair market value is \$4,000. *Nowacki testimony*.
8. The Assessor's case:
 - a. The Assessor contends that Nowacki provided no evidence to support a change in either assessment, and he recommends no change. *Durousseau testimony*.

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2009 and 2015 assessments. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized

appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2009 and 2015, the valuation date was March 1 of the assessment year. Ind. Code § 6-1.1-2-1.5(a).

- c. Nowacki contends the property's assessment should be \$4,000 for both years at issue but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2009 and 2015 assessments.

ISSUED: December 12, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.